



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL, FFL

### Introduction

The landlords applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The landlords ask me for the following orders against the tenants.

1. Compensation in the amount of \$1,604.00 for damage caused by the tenants to the rental unit.
2. Reimbursement for the \$100.00 filing fee for this application.

The landlords appeared at the hearing on 20 April 2023. The tenants also appeared.

### Issues to be Decided

Do the tenants owe the landlords for damages to the rental unit?

And should the tenants reimburse the landlords for the fee required to file this dispute?

### Background and Evidence

The parties agreed that the tenants had rented a unit from the landlords. As part of this agreement, the tenants paid the landlord a security deposit.

When the tenants moved in, they inspected the unit with the landlords. But the landlords did not make a report of the move-in inspection. Similarly, after the tenants moved out, they inspected the unit with the landlords (on 2 June 2022). But, again, the landlords did not make a report of the move-out inspection.

The landlords told me that that during the tenancy the tenants damaged the unit in the following ways:

1. They removed front steps to the unit [the 'Steps'], and replaced them with small and flimsy steps.
2. They stained a wall of the unit, and made holes in it [the 'Wall'].
3. They broke a ceiling light [the 'Light'].
4. They broke a window [the 'Window'].
5. They damaged a door to the unit, including the weather stripping of that door [the 'Door'].

Also, the landlords said that the tenants left a pile of refuse on the property when they moved out [the 'Junk'].

Furthermore, the tenants did not return the key to the unit until the move-out inspection. The landlords said that, because of this, they could not rent out the unit until 15 June 2022. They said that this inability to rent out the unit for about 12 days cost them \$450.00 in lost revenue.

The tenants told me that they did not return the key until 2 June because on 1 June the landlords were unable to meet for the move-out inspection. But the landlords say that the key ought to have been returned 31 July...

At the conclusion of the move-out inspection, the landlords returned the security deposit to the tenants in cash. The landlords said they did this despite noting the damage to the unit because the tenants had intimidated them.

The landlords then told me the following about the costs associated with the tenants leaving the unit in the state that the landlords say they did:

1. Someone (identity unknown) told the landlords it would cost \$354.00 to replace the Steps.
2. New paint for the Wall cost the landlords \$250.00.
3. The cost to replace the Light would be \$80.00.
4. The cost to replace the Window would be \$200.00.
5. New weather stripping for the Door cost the landlords \$120.00.

After the tenants moved out, the landlords began advertising for a new tenant. They did this on 5 or 6 June. A little more than a week later, the landlords found a new tenant for the unit.

About nine months have now passed since the tenants moved out and since the new tenant moved in (on 15 June 2022). In those months, the landlords told me they have not replaced the Steps, Light, or Window.

The landlords have repainted the Wall. But they had no receipt for the paint they bought. They did not pay for any labour, as their son did the painting.

During the hearing, I saw a photograph of the Wall, which showed maybe a dozen small points on the Wall of a colour different from the rest of the Wall. The tenants explained that this photo depicted holes from hanging pictures, which the tenants then patched before moving out.

The landlords' son also told them that he replaced the weather stripping on the Door. But there was no receipt for this purchase.

And the landlords said that they paid \$150.00 cash to some labourers to remove the Junk. The landlords did not know who these labourers were, and they did not provide a receipt.

For their part, the tenants say that the Light, Window and Door were already damaged at the time they moved in. They conceded that they replaced the Steps, but that they were better steps than the original steps. And they denied leaving Junk behind.

### Analysis

Without further evidence, both accounts of the condition of the unit at the end of the tenancy are equally plausible. Plausibly, the tenants left the damage that the landlords say they did. But it's also equally plausible that the damage was there when the tenants moved in.

To convince me that it is more likely than not that the tenants damaged the unit as alleged, the landlords needed corroborating evidence of the damage and who caused it.

An inspection report, for example, showing the condition of the unit when the tenants move in, may have assisted the landlords with this. But the landlords never made any such report.

As for the expenses to deal with this alleged damage, the landlords again lack corroborating evidence: they did not call their son as a witness to the repairs done; they did not have receipts of materials purchased, or estimates of replacement items; and they did not call the labourers as witnesses to the Junk and its' removal.

On the specific allegation of the Wall damage, I find that picture holes are reasonable wear and tear, which the tenants are not obliged to repair (even though they attempted to do so) [see section 32 (4) of the *Residential Tenancy Act*].

But of greater significance to the landlords' case is the lack of mitigation: by and large, the landlords have done little to address the alleged damage. Consider the RTB Policy Guideline 5: Duty to Minimize Loss.

Indeed, the landlords have rented out the unit without addressing the damage to the Window and Light. This fact supports the tenants' allegation that these things were damaged when they moved in (for, if the landlords were content to rent out the unit to 'new' tenants with the items damaged, then presumably they would've been equally content to do so when the 'old' tenants had moved in). Similarly, the landlords have never replaced the Steps that they allege are so problematically small and flimsy.

Also on the issue of minimizing their alleged loss, what did the landlords do to rent out the unit after the tenants moved out? The landlords told me, effectively, that they did nothing until 5 or 6 June. Then, nine or ten days later, they found a new tenant. This is not an unreasonable period. I do not have any evidence as to why the landlords did not advertise for a new tenant before the unit key was returned to them.

### Conclusion

I dismiss the landlords' application, without leave to reapply. They have not met their burden of convincing me on a balance of probabilities that the tenants left the unit in a worse state than when they moved in.

And the landlords have done little to minimize the losses they claim to have suffered. As a result, whatever losses they may have suffered are theirs to bear.

I make this decision on authority delegated to me by the Director of the RTB under section 9.1(1) of the *Residential Tenancy Act*.

Dated: 28 April 2023

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Residential Tenancy Branch